



ATTORNEY GENERAL OF MISSOURI  
ERIC SCHMITT

August 29, 2019

BY HAND-DELIVERY

The Honorable Michael Parson  
Governor of Missouri  
State Capitol, Room 216  
Jefferson City, Missouri 65102

Dear Governor Parson,

This letter is in response to your request for our Office's advice on whether constituents' personal contact information – mailing addresses, email addresses, and telephone numbers – may be redacted under the First Amendment when responding to a Sunshine Law request. We understand that the Governor's Office is not redacting constituent names or the substance of the communications received under the First Amendment.

Our Office has carefully reviewed your inquiry. We recommend that your Office not rely on the First Amendment for blanket redactions of personal contact information.

Missouri's Sunshine Law declares our state's commitment to openness in government: "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law." § 610.011.1, RSMo. Exceptions to the Sunshine Law are strictly construed. *Id.* "Hence, public records must be presumed open to public inspection unless they contain information which clearly fits within one of the exemptions set out in § 610.021." *State ex rel. Missouri Local Gov't Ret. Sys. v. Bill*, 935 S.W.2d 659, 664 (Mo. App. W.D. 1996).

Section 610.021 authorizes a public governmental body to close public records if any of 24 exceptions apply. We understand that the Governor's Office has applied the First Amendment under § 610.021(14), which permits closure of "[r]ecords which are protected from disclosure by law."

Few courts around the country have addressed whether the First Amendment closes information in public records. The United States Supreme Court determined that disclosing names and addresses of referendum petition signers under Washington State's open records law "would not violate the First Amendment with respect to referendum petitions in general." *John Doe No. 1 v. Reed*, 561 U.S. 186, 202 (2010). Relying on the Supreme Court's decision, the Court of Appeals of Wisconsin concluded a Democratic state senator could not rely on the First Amendment to redact the names and email addresses of voters who had contacted him about collective bargaining legislation. *John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 848 N.W.2d 862, 872 (Wis. Ct. App. 2014). The Wisconsin appellate court specifically found that the voters' email addresses should be disclosed to advance the objectives of the open records law: "Whether a communication is sent to a public official from a source that appears associated with a particular unit of government (such as Milwaukee County or Waukesha School District), a private entity (such as Northwestern Mutual Life or Marquette University), or a nonprofit organization (such as American Red Cross or Clean Wisconsin, Inc.), or from individuals who may be associated with a specific interest or particular area of the state, from 'where' a communication is sent further assists the public in understanding who is attempting to influence public policy and why." *Id.* at 869.

We are not aware of any Missouri judicial opinion that has considered the First Amendment's application under the Sunshine Law. But when public entities have asserted a constitutional right to privacy to protect personal information sought by a Sunshine Law request, Missouri courts have viewed that constitutional argument skeptically. See *Am. Civil Liberties Union of Missouri Found. v. Missouri Dep't of Corr.*, 504 S.W.3d 150, 156 n.4 (Mo. App. W.D. 2016) (rejecting argument that a constitutional right to privacy protected the personal contact information and other personal material submitted by execution witness applicants); *N. Kansas City Hosp. Bd. of Trustees v. St. Luke's Northland Hosp.*, 984 S.W.2d 113, 121 (Mo. App. W.D. 1998) (rejecting argument that a constitutional right to privacy protected a hospital's contracts with third-party individuals and commercial entities); *City of Springfield v. Events Pub. Co.*, 951 S.W.2d 366, 372 (Mo. App. S.D. 1997) (rejecting argument that a constitutional right to privacy protected the names and addresses of new commercial utility customers or the names and addresses of new residential utility customers when the customer has not requested confidentiality).

Although they have not encountered First Amendment objections, Missouri courts have repeatedly ordered the disclosure of personal contact information in response to Sunshine Law requests. The Missouri Court of Appeals determined that a public school district had to produce a complete list of all students' names, addresses, and telephone numbers. *Oregon County R-IV Sch. Dist. v. LeMon*, 739 S.W.2d 553, 560 (Mo. App. S.D. 1987). Another appellate court required a city to produce the names and addresses of all new utility customers except those residential customers who requested nondisclosure, which the requesting newspaper excluded

from its request. *City of Springfield v. Events Pub. Co.*, 951 S.W.2d 366, 372 (Mo. App. S.D. 1997). A different appellate court found a state agency knowingly violated the Sunshine Law by redacting execution witness applicants' responses to questions regarding contact information, place of employment, and criminal history. *Am. Civil Liberties Union of Missouri Found. v. Missouri Dep't of Corr.*, 504 S.W.3d 150, 156 (Mo. App. W.D. 2016). Based on these decisions, this Office has consistently advised public entities that personal contact information is subject to disclosure under the Sunshine Law. See A.G. Op. 47-2010 (Dec. 14, 2010) (advising a state board that a list of personal care attendants' addresses is an open record under the Sunshine Law); A.G. Op. 95-2001 (June 4, 2001) (advising a public utility that the names, addresses, and water bills of its customers are subject to disclosure under the Sunshine Law); A.G. Op. 192-94 (Aug. 25, 1994) (advising that itemized telephone billing records of an individual legislator may be made available for inspection and copying under the Sunshine Law).

Despite these decisions on blanket objections, courts have recognized that redaction of personal contact information may be necessary in specific circumstances. After two newspapers published the name and address of a kidnapping victim while the assailant was still at large, the Missouri Court of Appeals determined that "the name and address of a victim of crime who can identify an assailant not yet in custody is not a public record under the Sunshine Law." *Hyde v. City of Columbia*, 637 S.W.2d 251, 263 (Mo. App. W.D. 1982).<sup>1</sup> In a different case, the Missouri Court of Appeals stayed release of Internal Affairs records to allow individual police officers to file a lawsuit to prevent the records' release. *Chasnoff v. Board of Police Comm'rs*, 334 S.W.3d 147, 152 (Mo. App. E.D. 2011). And the Supreme Court found that "those resisting disclosure can prevail under the First Amendment if they can show 'a reasonable probability that the compelled disclosure [of personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" *John Doe No. 1 v. Reed*, 561 U.S. 186, 200 (2010). These are fact-specific determinations made on an individual record basis and not as a blanket approach.

The Sunshine Law does include specific protections for personal information. For example, the Sunshine Law protects social security numbers (§ 610.035, RSMo) and credit card and PIN numbers (§ 610.021(22), RSMo). In addition, when the Sunshine Law defines what information is subject to release, courts have ruled that personal information not included in that definition does not need to be disclosed. See *Pulitzer Pub. Co. v. Missouri State Employees' Ret. Sys.*, 927 S.W.2d 477, 483 (Mo. App. W.D. 1996) (holding that § 610.021(13) provided for release of only certain

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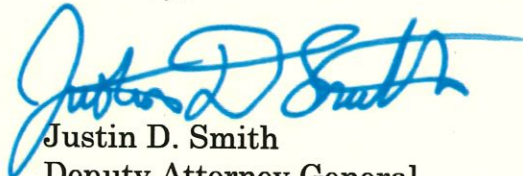
<sup>1</sup> Because the victim alleged the assailant had terrorized her at her home after publication of her address, the court allowed the victim to pursue a lawsuit against the city and a newspaper for the mental distress she claimed to have suffered. *Hyde*, 637 S.W.2d at 273.

specified information in employment records, which did not include personal contact information); *see also State ex rel. Goodman v. St. Louis Bd. of Police Comm'rs*, 181 S.W.3d 156, 160 (Mo. App. E.D. 2005) (holding that § 610.100.1(4) provided an exhaustive definition of incident report, which did not include information such as personal contact information). The Sunshine Law's protections for personal information also may be expanded by the General Assembly and the governor through the legislative process. *Goodman*, 181 S.W.3d at 159 ("The legislative purpose of the Sunshine Law is for governmental conduct to be open to public inspection, but not at the expense of the vital personal interests of the citizenry. It is the role of the legislature, and not the courts, to strike the delicate balance between these two competing interests."); *see also N. Kansas City Hosp. Bd. of Trustees v. St. Luke's Northland Hosp.*, 984 S.W.2d 113, 121 (Mo. App. W.D. 1998) ("Statutory amendment is the prerogative of the Legislature.").

Based on the authority discussed above, we recommend that your office not rely on the First Amendment for blanket redactions of personal contact information.

Please note that this letter does not constitute an official statutory legal opinion of the Missouri Attorney General under § 27.040, RSMo. This letter addresses only whether blanket redaction of personal contact information is appropriate under the First Amendment and § 610.021(14), and does not address any other Sunshine Law exception that may apply to individual records.<sup>2</sup>

Sincerely,



Justin D. Smith  
Deputy Attorney General  
for Special Litigation

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<sup>2</sup> The Governor's Office is a traditional client of the Attorney General's Office. Typically, our legal advice to you is an attorney-client communication and is privileged. However, in this situation, you have agreed to waive any privilege claims and allow this response to be made public.